

**U.S. DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
CALIFORNIA DESERT DISTRICT**

**El Centro Field Office
1661 So. 4th Street
El Centro, CA 92243**

**Decision Record
and
Finding of No Significant Impact**

**for
Temporary, Seasonal Route Closures in Peninsular Bighorn Sheep Habitat
from January 1 to June 30, Imperial County, California**

Prepared by:

**U.S. DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
CALIFORNIA DESERT DISTRICT**

**El Centro Field Office
1661 S. 4th St.
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Environmental Assessment CA-670-EA-2001-49

Approved by _____
Greg Thomsen, Manager
El Centro Field Office

Date

DECISION

Based on review of the environmental assessment (EA) CA-670-EA-2001-49, my Finding of No Significant Impact, and consideration of the 25 public comment letters submitted on the EA, my decision is to approve the temporary, seasonal closure of two routes in Peninsular bighorn sheep critical habitat within the Painted Gorge area of the Coyote Mountains in Imperial County, California, to motorized vehicle use. This closure is effective from January 1 to June 30 (i.e., during lambing season), annually, and affects land within the boundaries of the California Desert Conservation Area (CDCA) as shown on the attached map.

I have determined it necessary to use my authority under 43 Code of Federal Regulations (CFR) 8341.2(a) to temporarily and seasonally close the identified routes to motorized vehicle use in order for BLM to provide additional protection to threatened and endangered species listed under the Endangered Species Act (ESA). This restriction is applicable only to public lands managed by BLM and will take effect immediately. It will remain in effect until the BLM receives a biological opinion (BO) from the U.S. Fish and Wildlife Service (FWS) on the adequacy of the CDCA Plan to provide recovery of the Peninsular bighorn sheep. Any applicable terms and conditions, reasonably prudent alternatives and/or measures that are included with the BO will be implemented. The BO will provide guidance on which to base the designation of routes of travel as open, limited or closed and any other actions or amendments to the CDCA Plan if necessary.

Implementation of this temporary restriction includes the installation of one gate across each route labeled T670130 and T670214 as shown on the attached map (two gates total), posting signs at or near these gates which explain the purpose of the seasonal closure, and producing a brochure with a map which describes the closure.

Exceptions to this motorized vehicle restriction include fire, military, emergency or law enforcement vehicles when used for emergency or patrol purposes; vehicles whose use is expressly approved by the authorized officer; and vehicles used for official purposes by employees, agents or designated representatives of the Federal government or one of its contractors as approved by the authorized officer. Non-motorized uses such as backpacking, bicycling and horseback riding are not affected by this restriction.

RATIONALE

The Peninsular bighorn sheep is listed by the FWS as endangered. This decision to temporarily close routes in Peninsular bighorn sheep habitat is necessary because populations have considerably diminished over the last several years throughout the Peninsular Ranges. This is due to both natural and human factors. The remaining populations are therefore at risk to these factors. There is a considerable body of literature that indicates vehicles and human activities related to use of vehicles can have negative effects upon the species (see "Supporting Research" section below). Reducing the amount of area in which bighorn sheep may encounter humans and vehicles should enhance persistence of the remaining populations. By taking this temporary closure action, BLM will provide additional protection for the endangered species and meet obligations under the ESA until final disposition of the routes is determined through

consultation.

This temporary restriction will displace some off-highway vehicles (OHV) during the months of closure (i.e., January 1 to June 30 annually). The closure will not have a significant negative impact on recreation since the closure is seasonal and temporary and it affects an area of relatively light OHV use. Recreation opportunities on nearby public land exist at the Plaster City Open Area to the east. This action addresses relatively infrequent access and does not affect BLM decisions on the granting of new access ways from BLM authorities for permitted land uses.

43 CFR 8341.2 (a) provides that the authorized officer shall immediately close an area when it is determined that OHV use is causing or will cause considerable adverse effects upon soil, vegetation, wildlife, wildlife habitat, cultural resources, historical resources, threatened or endangered species, other authorized uses or other resources. Due to the decline of Peninsular bighorn sheep populations and the known negative effects of vehicle impacts on the species (see “Supporting Research” section below), BLM concludes this temporary, seasonal closure under 43 CFR 8341.2(a) is necessary.

On March 16, 2000, the Center for Biological Diversity, et al (Center) filed for injunctive relief in U.S. District Court, Northern District of California, against BLM. The Center alleged that BLM was in violation of Section 7 of the ESA by failing to enter into formal consultation with the USFWS on the effects of the CDCA Plan, as amended, upon threatened and endangered species. Instead of litigating the case, and facing possible injunction of all authorized desert activities, BLM entered into five stipulated agreements, including the stipulation which includes these route closures.

As an interim measure, BLM implements this closure to provide additional protection to bighorn sheep populations pending completion of consultation with FWS, and implementation of any subsequent mitigating measures. By implementing this interim closure, BLM ensures compliance with Sections 7(a) and 7(d) of the ESA. Section 7(a)(1) of the ESA provides that Federal agencies are to utilize their authorities to further the purposes of the Act by carrying out programs for the conservation of listed species (16 USC 1536(a)(1)). Section 7(d) of the ESA provides that after initiation of consultation under §7(a)(2), a Federal agency shall not make any irreversible or irretrievable commitment of resources with respect to agency action which has the effect of foreclosing the formulation of implementation of any reasonable and prudent alternative measures which would not violate the requirements of the ESA.

BLM initiated consultation on January 31, 2001, with the FWS on the CDCA Plan as amended. A BO is expected later this year. BLM initiated consultation on this interim closure on September 14, 2001, and FWS issued a positive concurrence on October 9, 2001.

This interim closure is consistent with the CDCA Plan as amended. The CDCA Plan contains general and specific direction for protecting listed species, such as the taking of appropriate

action, including closure of routes and areas (CDCA Plan, page 82, March 1999; reprinted version).

By taking this temporary action, the BLM contributes to the conservation of Peninsular bighorn sheep in accordance with Section 7(a)(1) of the ESA. A variety of human activities such as hiking, mountain biking, hang-gliding, horseback riding, camping, hunting, livestock grazing, dog walking, and use of aircraft and off road vehicles have the potential to disrupt normal bighorn sheep social behaviors and use of essential resources, or cause bighorn sheep to abandon traditional habitat (McQuivey 1978, MacArthur et al. 1979, Olech 1979, Wehausen 1979, Leslie and Douglas 1980, MacArthur et al. 1982, Graham 1980, Bates and Workman 1983, Wehausen 1983, Miller and Smith, Krausman and Leopold 1986, Krausman et al. 1989, Goodson 1999, Papouchis *et al.* 1999). Although incidences have been documented in which bighorn sheep populations did not appear to be affected by human activity (Hicks and Elder 1979, Hamilton et al. 1982), numerous researchers, including these authors, have documented altered bighorn sheep behavior in response to human disturbance. Even when bighorn sheep appear to be tolerant of a particular activity, continuous and frequent use can cause them to avoid an area, eventually interfering with the use of resources such as water, mineral licks, lambing or feeding areas, or use of traditional movement routes (Jorgensen and Turner 1973, McQuivey 1978, Graham 1980, Leslie and Douglas 1980, DeForge and Scott 1982, Hamilton *et al.* 1982, Krausman 1986, Rubin *et al.* 1998). Jorgensen (1974) reported that bighorn sheep use of important water holes was 50% lower on days with occurrence of motorized vehicle traffic. This behavior by bighorn sheep would be expected to carry over to animals seeking forage areas and thermal cover as well. Olech (1979) noted that bighorn sheep did not use water holes when motorcycles were heard nearby. In terms of a seasonal closure for lambing season, Light and Weaver (1973), Wehausen (1980), found that ewes with lambs are typically more sensitive to disturbance, and Papouchis *et al.* (1999) found bighorn sheep to be more sensitive to disturbance during spring and fall, corresponding with the lambing and rutting seasons respectively. Therefore, bighorn sheep populations are susceptible to losses from both human and natural factors, including human intrusion during lambing season. Reducing such intrusion in various places of habitat in various areas targeted in the lawsuit stipulation, including the area of this proposed action, should help reduce overall impacts related to lambing and increase lamb survival.

This closure conforms to the California Desert Conservation Area (CDCA) Plan, 1980, as amended, which allows for the use of existing routes of travel in all Class “L” (Limited) and “M” (Moderate) areas, and in those Class “I” (Intensive) areas not designated open and in unclassified lands, unless other limitations are in effect. However, the CDCA Plan also allows for the taking of appropriate action, including closure of routes and areas to prevent deleterious affects to natural resources (CDCA Plan, page 82, reprinted version). The proposed action is in conformance with Title 43 of the Code of Federal Regulations (CFR), Subpart 8341, regarding closures and restrictions. The decision is in conformance with the consultation received from the FWS pursuant to Section 7 of the Endangered Species Act, 16 U.S.C. §1536 (ESA) and its implementing regulations in 50 CFR §402.14 as noted above.

PUBLIC INVOLVEMENT

On June 15, 2001, a notice of the proposed order to temporarily restrict motorized-vehicle access

as described in Environmental Assessment CA-670-EA-2001-49, was published in the Federal Register (66 FR 32372-32373). On the same date, the BLM issued a news release regarding the proposed order. On June 18, 2001, BLM distributed the EA for a two-week comment period to a wide range of interested parties identified through a mailing list maintained at the BLM's California Desert District Office. The period for public comments ended on July 9, 2001.

Twenty-five comment letters were received. Twenty-three of these letters generally supported the proposed seasonal closure, and four of these raised specific points for response. The remaining two comment letters opposed the seasonal closure and raised specific objections. A summary, beginning with the comments of support and followed by specific objections to the seasonal closure, follows along with BLM's response.

Comment: Several comments urged immediate closure of Painted Gorge Road to protect Peninsular bighorn sheep during lambing season.

Response: While the settlement stipulation did state BLM "shall close and block Painted Gorge Road..." this is a county road which BLM has no authority to close. BLM determined closure of two BLM routes which fork off of Painted Gorge Road by installing gate barriers would meet the stipulated intent of restricting access to Carrizo Peak during the bighorn lambing season. Immediate closure of the BLM routes was not possible, since BLM must comply with regulatory requirements, which included publication of the proposed decision and opportunity for public comment prior to closure. However, this closure will be implemented, and gates installed prior to the upcoming lambing season (January 1 to June 30, 2002).

Comment: BLM should proceed immediately with its implementation of its decision by posting signs that the area is closed to entry during lambing season and that animals are not to be harassed; constructing closure gates at strategic points to prevent vehicular entry from occurring; constructing fences alongside gates to define the closed area and aid in preventing entry; and beefing up patrols in the area.

Response: Signs will be posted near the gates which describe the purpose of the closure and penalty for disobeying the closure. Gates will be constructed on two BLM routes to prevent vehicular access during lambing season. However, fences will not be installed because the gate locations are surrounded by topographic features which obstruct vehicular entry. The lambing area is also surrounded by wilderness area, where motorized vehicles are not allowed. BLM rangers will patrol the area to ensure compliance.

Comment: Specific data citations, where available, are recommended to justify your action and bolster the case against the opposition. Is the exemption of all non-motorized uses in the Coyotes defensible from the science available? How did the agency arrive at the decision to close the two routes listed and based on what exact criteria?

Response: Data citations and a summary of research findings are found in the "Rationale" section of this Decision Record.

While a number of studies have found effects to sheep from humans on foot as cited in the

“Rationale” section, BLM determined that excluding vehicles is likely to reduce the total number of hikers (and other human uses) in the area because motorists often leave their vehicles to hike in the surrounding rugged terrain. Therefore, the vehicle closure will likely reduce impacts to sheep from both vehicles and hikers and provides the necessary protection to the bighorn sheep during lambing season.

The two routes were chosen to effectively restrict public vehicular access into the Carrizo Peak and surrounding Coyote Mountains Wilderness Area, where the lambing primarily occurs. The locations where the gates would be constructed were selected at key points on public lands that would most effectively obstruct motorized vehicle use into the area while still providing public access into non-lambing areas of public lands. The gates would be locked during lambing season, and are surrounded by topography not easily passed by motorized vehicles.

Comment: We expect BLM will make a final decision to approve the proposed (closure) action no later than July 16, 2001. We expect BLM will be fully prepared, with strong gates built and locked, to implement, patrol and monitor the Coyote Mountains area closure by January 1, 2002. We notice BLM has decided on a gate point for the northern gate that is about 1/8 mile east of a point listed below that was originally selected by the Center (for Biological Diversity) and BLM as a strategic location during a February 20 field trip to the area: UTM 594674 E; 3632237 N.

Response: The original target date of a final decision on this closure of July 16, 2001, was not met due to BLM priorities and the administrative process requirements. However, since the lambing season will not begin until January and the closure will be implemented before then, the intent of the stipulated agreement will be met. Gates will be installed during December 2001, and full implementation of the seasonal closure will begin on January 1, 2002 (including locked gates and ranger patrol).

The northern gate’s original proposed location was determined to actually be on private and was subsequently moved to UTM coordinates 594895.87 E; 3632292.29 N. The new location was determined to be as effective as the original location in obstructing motorized vehicle passage during lambing season.

Comment:

1. A two-week public comment period is insufficient review time.
2. BLM has no closure authority under CFR 8364.1 or under the Federal Land Policy and Management Act (FLPMA) of 1976 (43 USC § 1781 (d)).
3. BLM is making or extending withdrawals.
4. BLM is making decisions that only the Secretary of the Interior can make.
5. BLM cannot close CDCA areas and trails with an order.
6. BLM cannot close areas or trails outside critical habitat.
7. The closure is not permitted under the recovery plan.
8. The temporary closure is significant and requires an EIS.
9. BLM is not complying with the Regulatory Flexibility Act and should conduct the process through proposed regulations and guidelines and involving hearings.

Response:

1. BLM has the legal discretion to determine the amount of time for public review of an EA. In consideration of the specific nature of the proposed interim restriction and the length of the document to be reviewed, BLM determined that 15 days was an adequate period of time for public review.
2. The authority for the basis of this restriction has been changed to 43 CFR 8341.
3. BLM is not making or extending withdrawals. This interim restriction does not propose to be withdrawn from mineral entry or other land laws. In addition, this interim action is temporary in nature.
4. The authority under 43 CFR 8341 has been delegated to Field Managers by the Secretary of the Interior.
5. Regulations at 43 CFR 8341 provide that a Field Manager may temporarily close road, trails and areas to motorized vehicle use if it is determined such use is causing adverse effects on threatened or endangered species. Long term decisions on vehicle access are made through the land use planning process with full public involvement.
6. BLM's responsibility under the Endangered Species Act applies to listed species regardless whether they are inside or outside designated critical habitat.
7. This is true. However, the closure does fulfill a responsibility of BLM to adequately protect a species listed under the Endangered Species Act.
8. The BLM has determined that the interim restriction does not warrant preparation of an EIS given its temporary nature.
9. Since no regulatory actions (i.e. promulgation of new regulations or amendments) are involved, this action does not fall under the requirements of the Regulatory Flexibility Act.

Comment:

1. BLM fails to include or explain the technical data showing that the proposed closure is necessary to protect Peninsular bighorn sheep.
2. BLM fails to explain why OHV recreation alone, and not other activities, such as backpacking and horseback riding, disturb the bighorn sheep during the lambing season and therefore must be restricted.
3. BLM fails to include updated studies on OHV impacts on bighorn sheep in the Painted Gorge area, and instead relies on studies that are 16 to 27 years old and have no direct bearing on the closure locations.
4. BLM fails to provide any quantitative analysis of the number of OHV users who currently use the affected routes and will be displaced by the proposed closure.
5. BLM fails to analyze the closure's impacts on public access to the areas currently served by routes T670130 and T670214, especially impacts on persons who are not physically capable of reaching these areas on foot (e.g., seniors, children, the physically disabled).
6. BLM fails to assess the socio-economic impacts of the proposed closure.
7. BLM fails to assess the proposed closure's potential conflicts with state, regional, and local planning policies and documents, as required by National Environmental Policy Act (NEPA) and the Federal Land Policy and Management Act (FLPMA).
8. BLM fails to disclose or evaluate the potential public safety impacts of closing yet another set of traditional OHV routes, and forcing thousands of OHV users onto fewer and smaller areas of the desert.

9. BLM fails to provide an adequate analysis of the cumulative impacts of the proposed closure and all other closures currently being implemented by BLM within the CDCA.
10. BLM fails to consider and examine an adequate range of alternatives to the proposed closure, and specifically fails to examine alternative that would reduce recreation and public access impacts while still providing adequate protection for the Peninsular bighorn sheep.
11. BLM fails to consider and examine feasible mitigation measures for reducing the proposed closure's impacts on OHV recreation and public access.
12. BLM fails to disclose that the proposed closure constitutes an OHV route change and plan amendment under FLPMA, thus requiring that BLM consult with affected OHV users prior to adoption and implementation. BLM fails to disclose that this required consultation has not taken place.

Response:

1. Data citations and a summary of research findings are found in the "Rationale" section of this Decision Record.
2. Because of the remoteness and geographical configuration of this area, public access is generally dependent on motorized vehicle access. Other public uses, such as backpacking and hiking, will be affected by the motor vehicle restrictions because motorists often leave their vehicles to hike in the surrounding terrain. Therefore, the vehicle closure will likely reduce impacts to sheep from both vehicles and hikers.
3. BLM reviewed all available studies regarding Peninsular bighorn sheep and cites the known studies and their conclusions in the "Rationale" section.
4. The number of OHV users in this area is likely small because of its remoteness, but as pointed out in the Decision Record, we do not know the actual number of visitors to this area each year.
5. The closure is seasonal, therefore members of the public will have access to these routes from June 30 through January 1, each year.
6. BLM acknowledges there could be an impact to businesses in the Ocotillo area, but determined any such impact is likely to be small.
7. BLM has determined this decision is consistent with the CDCA plan and is in compliance with NEPA and FLPMA. We are not aware of any conflict with state, regional, or local planning policies and documents.
8. We do not know the actual number of visitors in this area, but because of its remote location, it is unlikely that it is in the thousands." Whatever the actual number, displacement would only be during certain parts of the year, as the closure is seasonal in nature, and there are open and limited use OHV areas adjacent to the closure area.
9. Cumulative effects will be analyzed when the CDCA Plan is amended as described in this Decision Record.
10. Unfortunately, a wide range of alternatives does not exist in this case and BLM determined closure and no closure alternatives were adequate for NEPA and Endangered Species Act compliance.
11. BLM has determined no mitigation measures are appropriate in this case, since the closure is seasonal in nature, and the area will remain open to motorized vehicle use approximately six months each year.
12. This action is interim and seasonal in nature. Long-term OHV route decisions will be determined through an amendment to the CDCA plan with full public involvement as described

in this Decision Record.

APPEAL RIGHTS

This decision is effective immediately. This decision may be appealed to the Interior Board of Land Appeals, Office of the Secretary, in accordance with the regulation contained in 43 CFR Part 4 and the enclosed Form 1842-1. If an appeal is taken, your notice of appeal must be filed in this office (at the above address) within 30 day from receipt of this decision. The appellant has the burden of showing the decision appealed from is in error.

If you wish to file a petition pursuant for a stay of the effectiveness of the decision during the time that your appeal is being reviewed by the Board, the petition for a stay must accompany your notice of appeal (43 CFR 4.21). A petition for a stay is required to show sufficient justification based on the standards listed below. Copies of the notice of appeal and petition for a stay **must** also be submitted to each party named in this decision and to the Interior Board of Land Appeals and to the appropriate Office of the Solicitor (see 43 CFR 4.413) at the same time the original documents are filed with this office. If you request a stay, you have the burden of proof to demonstrate that a stay should be granted.

Standards for Obtaining a Stay

Except as otherwise provided by law or other pertinent regulation, a petition for a stay of a decision pending appeal shall show sufficient justification based on the following standards:

- (1) The relative harm to the parties if the stay is granted or denied,
- (2) The likelihood of the appellant's success on the merits,
- (3) The likelihood of immediate and irreparable harm if the stay is not granted, and
- (4) Whether the public interest favors granting the stay.

FINDING OF NO SIGNIFICANT IMPACT

The environmental impacts associated with the proposed action and the alternatives have been assessed. Based upon the analysis provided in the attached EA, I conclude the approved action is not a major federal action and will result in no significant impacts to the human environment under the criteria in Title 40 Code of Federal Regulations Subpart 1508. Preparation of an Environmental Impact Statement is not required.

Approved by_____

Greg Thomsen, Manager
El Centro Field Office

Date_____

Literature Cited

The following references have been considered in making this decision:

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